



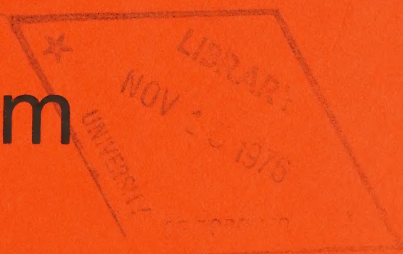
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# Family Law Reform








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# Family Law Reform

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# FOREWORD

By The Honourable R. Roy McMurtry, Q.C.,  
Attorney General of Ontario

Traditional legal concepts governing family property and support must be reconsidered in light of the impact of major social and economic changes on modern family life. Recognizing the need for change, one of my predecessors as Attorney General requested the Ontario Law Reform Commission to study Ontario's property and support laws. The Commission's reports and recommendations on the subject were subsequently tabled in the Legislature, and the Government committed itself to family law reform in the Speech from the Throne in 1974.

The foundation for broad legislative reform was laid with *The Family Law Reform Act, 1975*, in force since July 10, 1975. The Act abolished the archaic common law doctrine of unity of legal personality—the fiction that husband and wife were one person in law—the husband. In creating equal legal status for married men and women, the Act recognized wives as separate individuals, not as satellites of their husbands.

However, the Act is an initial step on the road to reform, but only a first step. In particular, *The Family Law Reform Act* does not deal with the question of how a family's assets ought fairly to be shared when a marriage is dissolved.

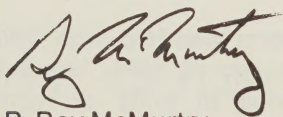
On the other hand, during marriage provincial law places the entire burden of supporting the family on the husband. If a wife has the means to help support the family, the law does not permit a husband to claim support from his wife (except in a divorce action). The right to support depends on the commission of a matrimonial offence such as

adultery or cruelty (even on an isolated occasion), rather than the needs and means of the parties. These are specific issues which urgently need to be reformed, and the reform of family law as a whole is a matter to which I have assigned the highest priority.

Because family law is so fundamental to the lives of all of us, we in government felt it was essential to consult the public before making any firm decision on specific recommendations of the Ontario Law Reform Commission. To accomplish this objective, former Attorneys General have held public meetings across the province, and met with representatives of various interest groups. A film, which was in constant circulation throughout Ontario, as well as a booklet summarizing the recommendations of the Ontario Law Reform Commission, has encouraged public debate of the issues. We are extremely pleased with the wide response we have received.

The government has now formulated proposals for a comprehensive reform of the law of family property and support. Those proposals are explained in this position paper and are set out as a draft statute in the Appendix. While this paper represents government policy, it is being circulated now for public comment with the expectation that some adjustments may be necessary to be more responsive to the needs of the people of Ontario.

I sincerely hope that public opinion will crystallize in favour of the approach we have taken.

A handwritten signature in black ink, appearing to read 'R. Roy McMurtry', with a stylized, flowing script.

R. Roy McMurtry,  
Attorney General.

Submissions and comments should be sent as soon as possible to the Policy Development Division, Ministry of the Attorney General, 17th Floor, 18 King Street East, Toronto, Ontario M5C 1C5.

# PART I—MATRIMONIAL PROPERTY

## THE EXISTING LAW

Under Ontario law, a husband's earnings and property accumulated from earnings belong to him; a wife's earnings and property bought with her earnings belong to her. While this system of property may seem equitable, it is unsuited for many marriages.

Traditionally, the husband is the breadwinner; the wife manages the household and cares for the children. The husband keeps his earnings and whatever property or savings he accumulates belong to him if the marriage terminates. The wife almost always has nothing because she rarely has earnings or savings of her own.

The wife's contribution as a homemaker and mother tends to be taken for granted and undervalued. Her managerial skills give her husband more freedom to function effectively in his occupational role outside the home. The wife assumes the burden and responsibility of caring for their children.

If a wife has earnings of her own which she devotes to family vacations or other consumable items, the law has also failed to recognize her contributions and has left her without a share of the family property. Marital property law should accommodate different life styles within marriage. The law of separate property fails to accomplish that purpose.

## Freedom of Choice

Under the present law of Ontario, even if a couple agree on how their property will be shared and enter into a marriage contract, the contract

may be invalid if it provides for division of property in the event of marriage breakdown.

Any system for sharing property must be designed with the average couple in mind. No single solution will be appropriate in all cases. Couples who object to the proposed property laws governing their relationship must have the opportunity to cut their matrimonial cloth to their own measurements. We therefore propose to recognize marriage contracts creating a custom-tailored system of property sharing, and the proposed statutory property rules would apply only in the absence of a written agreement to the contrary.

## POSSIBLE SYSTEMS OF PROPERTY LAW

### Full Community of Property

Under full community, property acquired by a couple after marriage would be jointly owned and managed during the marriage and shared equally after it is terminated. This would mean that, apart from a small minimum basic exemption, neither spouse could mortgage or dispose of any property without the agreement of the other. Each spouse would also be liable for the other's debts. Many couples choose to opt out of this system because it restricts business dealings. Some jurisdictions, like Quebec, have in fact abandoned it for a less restrictive system.

### Deferred Community of Property

Under deferred community, each spouse acquires and is free to manage and dispose of property separately. If the marriage ends, property acquired during the marriage is valued and divided into two equal shares. The spouse owning property worth more than his or her equal share compensates the other for the difference.

Generally speaking, spouses share the value of *all* property acquired *during the marriage*. Business property purchased during the marriage, for example, is subject to sharing. Property acquired before the marriage and gifts and inheritances are generally excluded from sharing. The increase in value or income derived from property owned before the marriage (including business profits) may be included or excluded.

This alternative tries to equalize the property of each spouse. There are, however, situations in which it is considered inequitable to divide property equally between the spouses. Where, for example, one

spouse's property consists entirely or even partly of damages representing pain and suffering from an injury, the court might decide the share of the injured spouse should be larger.

The adoption of this system is the Ontario Law Reform Commission's major recommendation for reform of family property law. At first the English Law Commission favoured this system, but it eventually opted for a system of judicial discretion which is now in force. Deferred community has not replaced a separate property system in any jurisdiction.

## Co-ownership of the Matrimonial Home

Each spouse would have the right to a half-interest in the matrimonial home, no matter which one holds title to the home, and regardless when it was acquired. Unlike deferred community, where each spouse is free to deal with his or her assets during marriage, this approach would require the consent of both spouses to the sale or mortgage of the home. If one party tried to dispose of the home without the knowledge or consent of the other, a court could block or invalidate the transaction, or order that one-half of the proceeds go to the non-consenting spouse. Both spouses would also have an equal right to occupy the matrimonial home. This proposal therefore gives both spouses rights in the matrimonial home *during the marriage*, not just at its termination.

## Judicial Discretion

Under this approach, a judge may distribute property between spouses, according to what seems fair, no matter what the legal ownership of individual items. Guidelines given to the court include such factors as the length of the marriage, the spouses' ages and their contributions to the marriage (including homemaking and child care). The judge may also transfer property to a child of the marriage, considering the child's contributions, earning power or disabilities or previous mismanagement by the parents. This can result in some of the property being shared by the spouses, but may not put them on an equal footing. England, New Zealand and Australia have adopted this system.

## Sharing of Family Assets: A Composite Approach

This approach would begin with a basic rule of equal sharing of "family assets", but would allow a judge to depart from equality if, after

considering such guidelines as the length of the marriage and the date the property was acquired, it appeared just to do so. The spouses would therefore have an expectation of what their respective interests in the family assets would be in a typical situation, although the judge would have some flexibility if either spouse could establish a need for more than an equal share.

Sharing would basically be limited to *family assets*, such as property ordinarily used or enjoyed by a family for shelter, household, transportation, education, recreational, social or aesthetic purposes. Family assets would also normally include the matrimonial home, recreation property, furniture, the family car and other household items. The basic test to establish a family asset is whether it is used by the family for one of those stipulated purposes. A farm, for example, would be a family asset only to the extent of the house and environs, and the rest of the farm would not automatically be subject to sharing.

Use during marriage is the basis of this system. Property acquired before the marriage, or given or bequeathed to a spouse, would be subject to sharing if it is used by the family. If a spouse brings property into the marriage, or is given property (within the description of family assets), both spouses have wider scope for vacations or acquiring other assets that are not subject to sharing. Also, no matter how or when the property is acquired, both spouses will normally help to care for it. On balance it seems fair to share assets acquired before the marriage as well as gifts or inheritances during the marriage. This would also simplify the system and eliminate complicated record-keeping and tracing assets to the date of purchase if the marriage broke down years later. A court could still consider the date and means of acquisition in deciding whether to split the shares equally or allocate a particular asset to one spouse's share.

The court would need the authority to order division of property other than family assets, where a spouse has made direct or indirect contributions to business assets owned by the other spouse. In other words, such contributions would not be recovered in a division of family assets alone. Also, if it could be shown that one spouse had dissipated the family assets, the court would need the power to award compensation for the other spouse out of other assets.

## Relationship of Alternatives

The two major kinds of alternatives are community and discretionary division. Co-ownership of the matrimonial home, while giving rights

during marriage, is largely a restricted application of the fixed property right principle of deferred community. The family assets composite approach tries to blend some principles of the deferred community system with the judicial discretion, in order to temper certainty with flexibility and create a system which would appeal to a broader segment of the married population.

## ASSESSMENT OF ALTERNATIVES

### Full Community

Full community of property would give property rights to both spouses during the marriage, not just on marriage breakdown. This system recognizes the partnership concept of marriage to the fullest degree. The automatic right of each spouse to share property equally would create a sense of certainty and reduce litigation. However, co-ownership of all assets during marriage severely inhibits a couple's freedom to deal with property, including a business. Each spouse is also automatically responsible for the other's debts. Many couples in community property jurisdictions have opted out of it and some of those jurisdictions, such as Quebec, have abandoned it, because of its rigidity and complexity. This system would be a most radical change for Ontario.

### Deferred Community

If deferred community was adopted as Ontario's basic matrimonial property regime, it would legally enshrine the equality of the spouses and recognize each spouse as an equal economic partner in marriage. The advantage of this system is that a spouse's right to an equal share of the matrimonial property acquired during the marriage is formalized and not subject to judicial discretion. The current expense and bitterness of litigation over family property rights could largely be avoided if the law was more certain.

However, there is a lack of overall public support for this alternative. One of the chief drawbacks is a lack of flexibility. This system does not take into account the circumstances of a particular case, and so is rather arbitrary. It would also call for a record keeping and valuation of property owned before marriage, gifts and inheritances. A second calculation would be required to value property on marriage breakdown. It might become necessary for accountants or lawyers to straighten out the financial affairs of average couples. Since business

property is shared under this system, there could be serious income tax and financial implications for splitting the business on marriage breakdown. Since community also applies when one of the spouses dies, it severely restricts freedom to dispose of property by will. Some jurisdictions have replaced full community with the deferred community of property regime, although no jurisdiction with property law similar to Ontario's has adopted it.

## Co-Ownership of Matrimonial Home

Co-ownership of the matrimonial home has received broad public support, but limiting the sharing to this single asset would do nothing for couples in rental accommodation. In Toronto, for example, approximately 45% of housing units are rented. It would be extremely unfair to ignore contributions of the homemaker in rental accommodation. This concept might also lead to unfairness in marriages that do not last very long. Automatic co-ownership of the matrimonial home during marriage would prevent many spouses from contributing to registered home ownership savings plans.

## Judicial Discretion

The chief advantage of discretionary division is its adaptability to suit the peculiar circumstances of each case. Furthermore, property and support provisions for spouses and children can be determined on a single application. The court can consider the capital assets and earning capacity of the spouses. This enables a judge to assess the impact of the support obligation in setting an appropriate property award. Children's economic interests can be protected upon the breakdown of a marriage by a property order in their favour (where an order in favour of the parent having custody is insufficient or inappropriate). Giving the courts statutory ground-rules would allow the evolution of a comprehensive body of law that would equitably deliver justice in individual cases. This system is simple and the least disruptive to our existing legal system, and at the same time responsive to the need for reform.

However, the flexibility of the system also casts some uncertainty on what a spouse is likely to receive. It is often impossible to estimate the value of the contributions of the non-earning spouse in dollars and cents. Without any legislative formula for the court to use in dividing property, the British judiciary has reverted to the dower-like concept of granting a wife a right to one-third of the capital assets and

one-third of the joint earnings of the couple. In New Zealand, the contributions of a spouse as a homemaker and in caring for children have been downplayed, to the extent that in some cases they have been seriously undervalued, despite legislation allowing a court to rule in favour of a spouse whose contributions were of a homemaking or "usual" character. In the absence of a clear and compelling legislative presumption, economic equality in marriage would likely *not* be the basic rule adopted by the courts in a discretionary system.

## Family Assets Approach

This approach offers the flexibility of discretionary division, with a fixed legislative starting point: spouses are *presumed* to have contributed equally towards assets used for their continuing mutual benefit. This recognizes marriage as an economic partnership, while allowing the courts latitude in individual cases which require more than a simple equal division.

The family assets theory is really an extension of the principle behind an equal division of the matrimonial home. At the same time, family law reform and recognition of the spouse's contribution as a homemaker would not be restricted only to spouses who had acquired a matrimonial home. This system is simple, yet flexible enough to deal with individual cases.

The family assets approach incorporates most of the advantages and disadvantages of the pure discretionary division approach, but adds significant improvements. A central problem in any discretionary system is the determination of what property is to be shared. Another major difficulty is the apparent reluctance of courts to advance towards the principle that marriage is an equal partnership. These problems are mostly overcome in the family assets system by (1) focussing the sharing rules on assets that are of continuing mutual benefit and (2) adding the presumption that each spouse has contributed equally to the acquisition or value of the subject property. This system also has the critical advantage of simultaneously allowing the court to resolve the inter-related issues of property and support.

The family assets system does not subject business property to automatic sharing and would thus leave each spouse free to engage in a business without having to have the other spouse's concurrence in individual transactions. However, where both spouses actually participated in the business, the contributions of each would be recognized.

The family assets alternative has not become law in any other

jurisdiction. Ontario would be attempting a unique solution without the experience of other jurisdictions to draw on. However, in most jurisdictions with a system of judicial discretion, sharing of matrimonial property is generally restricted to family assets, and that experience would provide some guidance.

## Proposed Property System

**The government proposes to adopt the family assets system as the basic system governing property relations between husband and wife in Ontario. The new system would apply only in the absence of a marriage contract between the spouses.**

We do not propose to make the family assets system apply on the death of either spouse. Under existing law and *The Succession Law Reform Act, 1976*, recently introduced in the Legislature, a surviving spouse has rights against the estate of a deceased spouse, if the latter has not provided adequately for the survivor. In most cases, a spouse who dies while still living with the other spouse will have bequeathed to the survivor a substantial portion of his or her property.

**As the rights of a surviving spouse appear to have been adequately provided for, and as the application of the new matrimonial property system on death would greatly complicate the administration of estates of deceased persons, we propose that the family assets system of sharing matrimonial property should apply only while both spouses are alive, and only in a marriage breakdown situation.**

# PART II—SUPPORT OBLIGATIONS

## INADEQUACY OF PRESENT LAW

### Only Men Can Be Ordered To Pay Support

Only wives can claim support under provincial law, and only a wife can oblige a husband to pay her debts for the necessities of life. The right does not apply conversely to husbands. A woman who is working or able to contribute to her child's support cannot generally be obliged to do so under provincial law. Only fathers can be obliged to contribute to the support of a child. These existing laws clearly discriminate against men.

With over 40% of married women in Ontario employed full- or part-time, the assumption that they cannot support themselves, their children or their spouses no longer applies in all cases. A need for support depends on the way couples manage their relationship and child-rearing during marriage and upon its breakdown. It does not depend on the inherent capabilities of either sex to support the other.

In 1968 the federal *Divorce Act* recognized that either spouse may be financially dependent, and provided that either husband or wife may be ordered to support the other or the children of the marriage, upon a decree nisi of divorce being granted.

In its Report on Support Obligations, the Ontario Law Reform Commission recommended a legal obligation on each spouse to support the other when in need, to the extent of his or her ability.

### Law Is Inflexible And Limits Court's Discretion

The law of support during marriage takes an inflexible position on

marital misconduct, one that produces arbitrary results. If a husband commits a single act of adultery, his wife is entitled to support for life, and a judge has no discretion to refuse support. If a wife commits a single act of adultery, even though she has been driven out of the home by her husband's cruelty, she is no longer entitled to support, and a judge has no discretion to award support.

By contrast, under the *Divorce Act*, the court can grant or refuse support "if it thinks it fit and just to do so, having regard to the conduct of the parties and the condition, means and circumstances of each of them". Thus, under the existing *Divorce Act*, support is considered *separately* from grounds for divorce, which are a combination of fault (such as adultery or cruelty), and no fault (such as separation for three years). The court may refuse support even though the divorce is granted. In deciding whether to exercise its discretion, the conduct of the parties, rather than specific matrimonial offences, is only one factor the court considers. The flexibility of the *Divorce Act* encourages people to seek an early divorce to benefit from the support provisions, rather than attempt to invoke a right to support during the marriage.

The Ontario Law Reform Commission Report recommends that matrimonial misconduct, instead of dominating the issue of support, should be only one factor in a series of flexible guidelines the court should consider to reach the amount of support to be awarded. The guidelines would include:

1. the economic resources of both spouses (property, income and earning capacity);
2. their age, and physical and mental condition;
3. whether either spouse has custody of a child of the marriage;
4. their prior standard of living.

The Law Reform Commission of Canada concurs with these factors, but believes that conduct during the marriage should not influence an award of support. It has recommended that the *Divorce Act* be amended to remove conduct as a factor.

## Support And Property Questions Are Decided Separately

Separate law suits are commenced for property and support questions, and they are often heard at different times before different judges. If

the support issue is settled before the property question, the support order may subsequently have to be changed. This situation may sometimes be unavoidable, but it should not be the rule. The resulting expense, delay and hardship have been severely criticized by the public.

The Report of the Ontario Law Reform Commission on Support Obligations states that these problems could be resolved by the creation of a "family settlement action", to decide custody of children, support and matrimonial property all at once.

## Support Order Expires Automatically On Divorce

By far the greatest number of orders for support are made in provincial court (family division). An order for the support of a wife made under *The Deserted Wives' and Children's Maintenance Act* does not survive a divorce, but an order for support of children is still enforceable after divorce. Often support is not claimed in divorce proceedings. A wife receiving Family Benefits or welfare will have no interest in protecting her right to support from her husband because the money has been assigned to the Ministry of Community and Social Services or the local municipality. In other cases, lack of foresight or confusion cause a spouse to neglect to claim support in a divorce.

## Enforcement And Investigative Procedures Unsatisfactory

All court orders for support in Ontario may be enforced through the provincial court (family division), with up to three months in jail if the person in default fails to satisfy the judge that he simply cannot pay. This provision has been criticized as lending a quasi-criminal nature to support proceedings. On the other hand, the threat of imprisonment often has a salutary effect on husbands who refuse to honour a support order. It will be necessary to decide whether jail should be retained for such recalcitrant husbands.

Another enforcement problem is the difficulty in tracing a defaulting husband who moves away. The Ontario Law Reform Commission has recommended that other government agencies and corporations (e.g. motor vehicle licence registration bureaus, O.H.I.P.) should provide information to court personnel to help trace defaulters. The federal government would also be asked for legislation to make Unemployment Insurance Commission records accessible. However,

the implications for invasion of privacy are serious and must be carefully considered.

## WHAT FACTS SHOULD GIVE RISE TO A SUPPORT OBLIGATION

No support obligation should be imposed unless the spouse claiming support can show financial need. This is the basis for support recommended by the Law Reform Commissions of Ontario and Canada. Another assumption is that a support order will not be made if the spouse expected to give the support is unable to do so. This reflects the existing law.

**We propose that the new legislation allow a judge to order a spouse to support the other spouse to the extent he or she is reasonably able to do so, if that other spouse is unable to support himself or herself, having regard to certain statutory criteria such as the conduct, ages, health and financial resources of the spouses.**

Need, not fault, would determine whether a spouse is entitled to support, and the amount. This is consistent with the principle accepted by the Ontario Law Reform Commission that support should be based primarily on the needs of the claimant. A judge would have wide discretion, within the general guidelines of the ages, income and earning capacity of the spouses and their standard of living. If the spouse was cohabiting with another person, the financial circumstances of that relationship would be considered.

In general, issues of property and support could be settled simultaneously, since the spouses would not have to meet a specific type of conduct test before a support application could be made. This proposal is mainly concerned with bringing the parties to terms. It shifts the focus from fault to the overall relationship of the parties.

Greater compatibility of provincial and federal legislation governing support would be achieved. Except for the issue of conduct during the marriage, this alternative is also compatible with the Law Reform Commission of Canada's recommendations on awards of support on divorce.

## CONDUCT AS A FACTOR IN AWARDING SUPPORT

The only grounds for an award of support before a divorce are

adultery, cruelty and desertion. The same kinds of conduct, when engaged in by the claimant spouse, are an absolute defence to a claim for support. In a divorce case, the court considers the conduct of both parties before it determines support. Conduct does not absolutely bar support in divorce cases, nor does it automatically entitle a spouse to support. The question is whether conduct should constitute a ground of entitlement or a defence to a claim for support during the marriage.

“Conduct” is broader than the concept of matrimonial “fault”, such as adultery or desertion. Conduct which affects the economic value of matrimonial property could be taken into account. Furthermore, conduct can amount to a matrimonial offence outside the ordinary concept of “fault”. For example, a spouse is confined in a mental institution, and the other spouse intends to abandon the marriage relationship, because there is no reasonable hope of resuming it. That spouse is technically guilty of desertion, although most people would not regard it as matrimonial fault.

To exclude conduct would offend many people's sense of justice. The Ontario Law Reform Commission recommends that the conduct of the spouses should figure in making or refusing an award of support or in determining the amount. It rejects the suggestion that judges should focus only on the relative economic needs of the spouses. A scheme of absolute liability for the support of a spouse would seem unjust. This would be particularly true in cases where the dependent spouse's conduct constituted an unprovoked repudiation of the marriage relationship.

So long as conduct is one of several factors considered by the judge, it should not be given undue importance. Although the tendency in common law jurisdictions is to minimize the importance of matrimonial fault, the law of support obligations in England, in other Canadian provinces and in the current *Divorce Act* still considers conduct of both parties relevant to awarding support. To include conduct as one factor among several would move provincial law closer to the standard for awarding support under the *Divorce Act*.

**We propose that the conduct of the spouses should be a factor which a judge can take into account, equally with other factors, in deciding whether to make an order for support and how much support should be awarded.**

## PLEDGING CREDIT FOR NECESSARIES

A married woman living with her husband has the legal right to obtain necessities of life on her husband's credit.

The Ontario and English Law Reform Commissions recommend that this right be abolished. Besides discriminating against men, the concept of a wife pledging her husband's credit to third parties to obtain necessities was thought to have little practical utility and offer little, if any, protection. It was also felt that this remedy has been replaced by welfare.

Abolition of the right to pledge credit wrongly assumes that welfare is always available. If the wife's right were abolished, merchants would likely be even more uncertain about advancing credit to homemakers with no independent income.

Legislation enabling each spouse to pledge the credit of the other for necessities and making them both liable to the third party would remove existing discrimination in the law and would protect creditors and the public purse. The spouses would be liable in proportion to their means or as otherwise mutually agreed.

The Quebec Civil Code Revision Office proposes a scheme enabling either spouse to pledge "household" credit. Community of property jurisdictions also enable either spouse to pledge the credit of the other, to a maximum amount.

There is a problem if the spouses are separated and one spouse wishes to terminate the authority of the other to pledge credit for necessities. It is generally resolved by advising creditors that the husband will not be bound in the future. In addition, if one spouse is sued by a third party, the other spouse can be made a defendant as well. At the time an order for support is made, outstanding debts of this nature are often considered.

**Accordingly, we propose that while the spouses are living together, each should have the right to make the other spouse jointly liable with him or her to a third party for necessities of life. The right of one spouse to pledge the other's credit could be terminated by notice to the creditors. We also propose that where a third party would be entitled to recover in a law suit against a minor under 16 for an amount owing for necessities of life, a parent of the minor should also be liable if he or she is liable to support the minor.**

## DURATION OF ORDER FOR SUPPORT OF A SPOUSE

Under Ontario law, an order for periodic support payments for a spouse continues until divorce or the death of either spouse. When the paying spouse dies, the recipient spouse may claim support out of the estate. The Ontario Law Reform Commission has recommended no change in that situation.

Under the *Divorce Act*, an order for periodic maintenance terminates automatically when one of the former spouses dies, unless the court orders otherwise. A voluntary settlement between the parties may also provide for payment after death. The federal Law Reform Commission has recommended no change.

The fact that the *Divorce Act* gives a judge discretion to make an order for the life of the recipient spouse, and bind the estate of the paying spouse, in some cases makes it a more attractive remedy than an application for support under provincial law. Reform of provincial support legislation will make it more consonant with the *Divorce Act*.

It is anomalous to refuse a judge hearing an application for support during marriage the same discretion he now has under the *Divorce Act*, and which the parties themselves can exercise in a separation agreement.

**We propose that the court should have the same broad discretion it now has in making a support order on a divorce, in which case a support order would terminate automatically on the death of either spouse unless the court exercised its discretion to award support for the life of the claimant spouse. We also propose that where the issue of support has not been raised in divorce proceedings, a provincial order for support would continue in effect.**

These new provisions would not override the general principle of the legislation: that support should last as long as the recipient is in need and the paying spouse is able to pay. Support orders of limited duration could be made to encourage a spouse's self-sufficiency and an application could be made to vary or terminate the order if the spouse no longer needed support.

## DURATION OF SUPPORT OF A CHILD

Under provincial law, parents are liable for supporting a child until 16 years of age, or until age 18 where the child is a full-time student. The

statutes dealing with child maintenance are silent on the issue of whether a parent is obliged to continue that support after the child has married. A provincial order for the support of a child continues in effect if the divorce decree is silent on this point.

The Ontario Law Reform Commission recommended that a parent's obligation to support a child should end at age 18 or marriage at a younger age, although two dissenting members of the Commission recommended instead that support should continue beyond 18, where the child's education and training would have continued if the parents had not separated.

Under the *Divorce Act*, support can be ordered for a child 16 or over who is "under his parents' charge but unable, by reason of illness, disability or other cause to withdraw himself from their charge or to provide himself with the necessities of life."

The courts have interpreted "unable, by reason of . . . other cause" to include full-time students over 18 at post-secondary educational institutions.

A statutory dependency imposed upon a child until 18 would erode many of his existing rights and freedoms. A 16-year-old is entitled to quit school, drive a car, apply for a social insurance number, get a job, apply for unemployment insurance or welfare, leave home or join the armed forces. Just because some children will continue to depend on parents beyond 16 does not mean that all parents should be obliged to support children until age 18.

**We propose that the parental obligation to support a child end at age 16, unless the child is unable to withdraw himself from parental control because of illness or other cause. We also propose that marriage of a child should automatically end the parental obligation to support that child.**

## WHO MAY CLAIM SUPPORT

### Existing Law

In the absence of legal definitions of wife, parent or child, it appears the right to claim support is limited to legally married couples and legitimate children. An illegitimate child is entitled to support under an affiliation order under *The Child Welfare Act*, but if the time limit for bringing such an action has elapsed, there is no remedy in other provincial support legislation.

A child accepted as a member of a family has no claim against the

person who has assumed the role of parent. By the same token, it appears that although a parent may claim maintenance from a child under *The Parents' Maintenance Act*, a stepparent would have no such right. The Ontario Law Reform Commission recommended that *The Parents' Maintenance Act* be retained.

Often, when a couple separate, their earnings are not enough to maintain both households and at least one of the spouses applies for assistance under *The General Welfare Assistance Act* or *The Family Benefits Act*. In considering the amount of benefits, welfare authorities deduct alternative sources of money, including the amount a spouse receives from an order for support.

An administrative practice has developed whereby the spouse's personal right to maintenance is assigned to the Ministry of Community and Social Service, which administers these Acts. The right of the Ministry to these assignments has been challenged in the provincial court (family division), where such proceedings are usually initiated.

The Ontario Law Reform Commission recommended that municipal or provincial welfare agencies providing financial assistance to a spouse or child should be able to take legal action against a person required to maintain a spouse or child.

## Which Children Should Be Able To Claim Support

An affiliation order for support of an illegitimate child can be made until he or she is two years old, or within one year of any act which proves paternity, or of the putative father returning to Ontario after an absence for the child's first two years.

Unless illegitimate children are able to claim support just as legitimate children do, existing legislation will continue to discriminate against them despite public and judicial criticism.

**In accordance with the Ontario Law Reform Commission Report, we propose that "child" should be defined to include a natural child, whether born within or outside marriage, a stepchild and a child whom the person had a settled intention to treat as a child of his family.**

## Who Should Be Entitled To Claim Support As A Spouse

Several provincial statutes afford rights to the common law spouse,

such as *The Succession Duty Act*, *The Gift Tax Act*, *The Workmen's Compensation Act* and *The Compensation for Victims of Crime Act*.

When a man and woman have been living together in a relationship of some permanence, their lives take on the same financial characteristics as a legally recognized marriage. Often the couple both contribute to household expenses. One may be just as dependent on the other for certain tasks as married persons are.

If they have a child, some provision should be made for the support of the parent caring for the child, at least until that parent starts to become self-sufficient. The British Columbia *Family Relations Act* recognizes this requirement by allowing a judge to award maintenance to the parent having custody of an illegitimate child until the child is six.

A common law spouse upon whom the other is financially dependent should bear some of the cost of restoring the dependent person to self-sufficiency, rather than forcing him or her to resort to welfare.

**We propose that common law spouses should be entitled to claim support. The status of a common law spouse would be recognized after two years of cohabitation, or if there was some permanence to the relationship and the couple had a child.**

## Who Should Be Entitled To Claim Support As A Parent

Under *The Parents' Maintenance Act*, needy parents are given a summary remedy for support from the children who are able to support them. The Ontario Law Reform Commission recommends that support of parents in need should be retained. However, *The Parents' Maintenance Act* does not extend to a person who raised someone else's child. If, as recommended above, a child in such a situation could claim support from the person who raised him, it would be consistent to permit that person to claim support from the child. This would also provide income for needy elderly people other than from public funds.

**It is proposed that natural parents, stepparents and persons who have treated a child as a child of their family should be entitled to claim support from the child.**

## Others Claiming Reimbursement From Those Obligated To Support

The Ontario Law Reform Commission has recommended that the

Ministry of Community and Social Services be given the right to institute proceedings against a defaulting spouse for support when it is providing support for a needy individual.

**It is proposed that both the individual receiving benefits and the agency paying them should have the right to claim against the defaulting spouse, parent or child, as the case may be.**

Where a person has, at a parent's request, assumed parental responsibilities for a child, the courts have in some cases ordered the parent to reimburse that person. Reimbursement depends, however, on a request by the parent that the other person bear the expense of raising the child. Individuals who perform such charitable services voluntarily are no less worthy than service agencies, nor should the person responsible for support escape his or her obligations.

**Accordingly, we propose that persons who undertake the care of someone whom another person is liable to support should be entitled to recover their reasonable expenses from that other person.**

## ENFORCEMENT OF SUPPORT OBLIGATIONS

### Nature of Proceedings

The Supreme Court of Ontario and the provincial court (family division) offer two different support remedies in terms of nature, procedure, grounds and enforcement mechanisms.

**We propose that, as a preliminary step toward a Unified Family Court with jurisdiction throughout Ontario, the distinctions between the support remedies available in these two courts should be abolished. We intend to institute a new summary procedure which would be available in both courts, in a less adversarial atmosphere than currently exists.**

### *Dum Casta* Clauses In Separation Agreements

A wife could lose her right to support if she commits even a single act of adultery, under a clause in some separation agreements called a *dum casta* clause. This kind of clause is not used in relation to men. The Ontario Law Reform Commission has recommended that it should no longer constitute a defence against a claim for support.

The clause encourages harassment and surveillance in the private

lives of a couple after they have separated. Under our proposed legislation the court would consider the conduct of both spouses in a dispute over support payment, and, if a spouse is cohabiting with someone else, the financial circumstances of that arrangement. If conduct is not longer to block a support order, it is inconsistent to retain it as an automatic end to payments under a separation agreement.

**We propose that a *dum casta* clause should not prevent a court from awarding support.**

## Attachment Of Earnings

The Ontario Law Reform Commission recommends that a judge have power to order attachment of a spouse's wages if there is a default of a support payment. The defaulting spouse's employer would be required to have the regular support payment deducted from the employee's wages. Saskatchewan has similar legislation in force and it is also advocated by Alberta's law reform body.

**We propose to adopt a procedure for attachment of wages in Ontario by order of a court on default in payment under a support order.**

## Jail For Non-Payment of Support

All court orders for support may be enforced by the provincial court (family division). If the judge is not satisfied that default is due to inability to pay, he may jail the defaulting spouse for up to three months, unless the arrears are paid.

This threat of jail has been criticized as worsening a difficult situation. Only about 3 or 4 per cent of those in default are actually imprisoned. The amount which could be recovered from such persons may not justify the cost to the taxpayer of keeping them in jail.

On the other hand, there is strong support for retaining this threat to coerce spouses when all else has failed. The power to jail someone for non-payment punishes wilful refusal in the nature of contempt of court, because it is invoked only if a person is able to pay and refuses. Statistics about the number of persons *actually* jailed tell nothing about the deterrent effect which the sanction may have.

**Accordingly, we propose that failure to pay under a support order when a person is able to do so should result in the defaulter being found in contempt of a court order. The contempt could be purged by payment as ordered, or by a fine or imprisonment for up to three months, in the discretion of the judge.**

## Access To Records For Purpose Of Tracing

The Ontario Law Reform Commission has noted that effective enforcement of support orders is impeded by the inaccessibility of government information (social insurance number, income tax return or O.H.I.P. record) which would disclose the whereabouts of a person ordered to pay support. The individual's right to privacy must be considered, but on balance, the public interest appears to be stronger in requiring persons to support their family.

**We propose that a court order could be obtained to require disclosure by government agencies or by any person of the address of an individual who has been ordered to pay support. The order would require disclosure of the address, and the address only, to a court officer.**

# PART III—DOWER AND THE MATRIMONIAL HOME

## DOWER

### History of Dower

Dower is an ancient common law right which, in general terms, gives a wife the right to a life interest in one-third of her husband's real estate after he dies.

Dower originated in England before 1066 in a feudal society where land was wealth and status. Dower provided a widow with shelter and an income from her unoccupied land. When the law developed this concept, it was impossible for a husband to give real property to his wife during his life or by will.

The ancient common law of dower has been preserved in Ontario's *Dower Act*, although women have been able to take ownership of property from their husbands for almost 100 years, and husbands have been able to will property to their wives for over 300 years. England drastically restricted the right of dower in 1833 and it was abolished in 1925. In Part IV of its Report on Family Law, the Ontario Law Reform Commission has also recommended replacing dower with more efficient remedies to deal with accommodation and support for spouses.

## Problems with Dower

Dower is one of the rare cases where women have a legal right unavailable to men. The common law right of curtesy gives a widower certain rights in his wife's real property on her death. However, because the widower can take curtesy only if his wife has not otherwise disposed of the property, the right has fallen into disuse. Its abolition in Ontario is proposed in *The Succession Law Reform Act*, recently introduced into the Legislature.

In large urban centres, only about half the population own their matrimonial home, and there has recently been a trend away from home ownership. There is no good reason why women whose husbands own realty should have more rights and privileges than women whose husbands cannot afford or choose not to buy land. Nor is the law of dower justified any longer on historical grounds of land being the only form of wealth worth passing on.

A wife's dower is little legal protection. A wife can lose her dower rights if, to use the quaint words of *The Dower Act*, she "leaves her husband and goes away and continues with her adulterer". The husband's right of curtesy (soon to be abolished) could not be lost by similar conduct.

Women generally sign away all their dower rights in separation agreements. This can also be done during the marriage, without the wife realizing the implications of her action.

Dower has largely fallen into disuse. It is common practice for a husband to leave all of his real estate to various persons, including his wife, providing that she surrender her dower right if she is to take her full share under the will. In the absence of a will, there is a statutory scheme of distribution so advantageous to widows that they seldom choose to take their dower rights.

Where the share in an estate is insufficient, Part IV of *The Succession Law Reform Act* will permit either spouse to apply for adequate provision for support. Thus, the support and shelter functions of dower have been taken over by other legislation which extends to men and women, even where there is no real property.

## Dower as a Means of Control Over the Home

In Canada, particularly in the western provinces, the wife's dower interest has become a means of exercising some control over dealings with the matrimonial home while both spouses are alive and exerting a right to remain in possession of the matrimonial home.

This can be seen in Ontario, in the need for a wife's signature on the sale of real property owned by the husband to "bar dower". However, if the husband has purchased land in a way that avoids dower, the wife's signature is not required, and she has no control over dealings with the property.

Even where the wife is entitled to dower, the husband may dispose of land without her consent. The purchaser simply pays into court a part of the purchase price equivalent to the wife's dower interest.

The western provinces have tried to protect wives during their husband's lifetime by enacting "homestead" legislation in which dower includes rights of occupation in and control over dealings with the matrimonial home. Ontario has left such protection to the courts, which have evolved a very limited right of either husband or wife to occupy the matrimonial home. However, the courts, within existing common or statute law, cannot interfere with either spouse's rights of ownership to prevent sales and other dealings with the home.

## Abolition and Replacement of Dower

Dower no longer affords meaningful protection for widows. It is also inadequate for controlling dealings with the matrimonial home, to assure a wife of shelter.

**Accordingly, we propose that dower be abolished and replaced by legislation to give both spouses rights in the matrimonial home. Those rights will be explained below.**

## RIGHTS IN THE MATRIMONIAL HOME

### Nature of the Problem

It is necessary to adopt rules to determine which spouse is entitled to possession of the matrimonial home on the breakdown of marriage. Whatever rules of *ownership* apply, they will not take into account the immediate needs of the children and the spouses for security and shelter. Often the problem arises when a husband leaves the matrimonial home, which he owns outright under the existing system of separate property, with his dependent wife and children in occupation. As owner, the husband may sell the home to a third party, who can legally evict the wife and children, since the wife has no effective recourse to protect her possession of the home. Another common example is a jointly owned home where one spouse tries to deny entry to the other because of allegedly cruel conduct. As joint owner, the

evicted spouse would normally be entitled to possession of the home equally with the other spouse. The evicted spouse will often apply for partition and sale of the property, a remedy to which one of two joint owners is normally entitled.

Provision of adequate financial support will likely meet the needs of a spouse and children in most cases. However, special needs such as illness or inability to find suitable accommodation for children should be provided for by the legislation.

Ontario has provided one statutory remedy for dealing with the right to possession of disputed property: *The Married Women's Property Act*. The law on the application of this Act is unclear and has been generally criticized as unsatisfactory. One judge commented that the law is "in a state of horrid confusion".

## Kinds of Property to be Covered

The Ontario Law Reform Commission recommends that spouses be granted possessory rights in the matrimonial home, if it is owned by either or both of the spouses, but not if it is rented, or if the spouses have only a life estate in the property. The greatest problem with leaving rented premises out of any new legislation is the same as the major problem with dower: it ignores the very large portion of the population that does not own land. A home is no less a home because it is a rented apartment, and the needs of a spouse or children for that home are still worth protecting under the law. Ontario's recent legislation to provide security of tenure in leasehold premises has brought the positions of tenants and land owners much closer together, and the relatively short duration of leases is not as important as it once was.

If life interests in land are not covered, life estates will undoubtedly enjoy renewed popularity among husbands in Ontario as a device to protect their property from any interference by their wives especially if they want to create a life interest for themselves and give the remainder directly to their children.

## Entitlement to Possession

Where the matrimonial home is nothing more than a roof over the spouses' heads, no interference with proprietary rights in the home or its contents will normally be warranted, because the provision of sufficient financial support will fulfil the need for shelter. But where young children are involved, or where one of the spouses has

particular needs, the court will have to balance those needs against the property rights of the other and assess the hardships involved in an order for possession. Examples of special needs might be illness or infirmity, or difficulty for a spouse in travelling to work.

Once an order for possession of the home or its contents is made, the courts would need the power to evict one spouse (and the children, in a proper case), grant the other exclusive possession of part or all of the home and contents, and order that neither molest the other. The court should also have power to order the return of household goods that have been removed.

A possessory order would generally be of short duration, permitting a spouse and children to find new accommodation. There will be some cases, however, when a spouse's disability would require a longer term. The jurisdiction of the court should be flexible enough to permit orders for fixed or indefinite periods, beyond the divorce of the spouses where necessary. Where circumstances change, either party should naturally be entitled to ask for a variation of the possessory order.

## Proposals for Rights to Possession

**It is proposed that either spouse would have the right to seek a court order for possession of the matrimonial home and its contents. This procedure would be available even though the spouses rented their home or held only a life interest in it, and regardless of which of the spouses held legal title. Before granting a possessory order, the court would have to satisfy itself that the provision of financial support would be an inadequate remedy in the circumstances.**

## Restrictions on Dealings with the Property

Legislation to protect a spouse's possession of the matrimonial home will be illusory if the other spouse is free to deal with his or her interest in the property without the consent of the other. The four western provinces and the Northwest Territories require the written consent of a non-owning spouse when the matrimonial home is sold or mortgaged. The Ontario and Canada Law Reform Commissions proposed to meet this problem by granting immediate co-ownership of matrimonial homes. The Quebec Civil Code Revision Office's approach is to prohibit all dealings with the home and the household furniture without the consent of both spouses.

**It is proposed that Ontario adopt the western system of requiring a**

**spouse's consent to dealings by the other spouse with the matrimonial home, and that this requirement apply to all matrimonial homes, including mobile homes.**

The sanction for dealing with property without the required consent would be the setting aside of the transaction, except where innocent third parties are involved. If the transaction cannot be set aside, the remedy would be a claim for increased support or a greater share of the matrimonial property.

## Protection of Rights as Against Third Parties

A spouse not registered as an owner of the matrimonial home can be protected by conveyancing practices that also apply to dower, whereby a male land owner must complete an affidavit of marital status. If he is married, the purchaser must have the wife's signature to waive any claim for dower; otherwise the purchaser is open to a possible future claim. This kind of procedure could be used to prevent an unscrupulous spouse from selling the home out from under a needy spouse and children. Under the new legislation, the consequences would be more serious if a purchaser bought a home subject to a potential possessory claim: in dower cases, the wife's right is almost always converted to a money amount, which the purchaser could satisfy from other sources. A family's right to possession of the matrimonial home where the purchaser knew or should have known such a claim existed should prevail over the purchaser, however, for as long as the family is entitled to possession. This is because the purchaser disregarded the usual precautions when buying land, and because the purchaser would not have the dependency on the matrimonial home on which the applicant spouse's right to possession is based. The Manitoba and Saskatchewan legislation and the Ontario and Quebec proposals give the interest of the non-owning spouse priority over that of a purchaser. The purchaser would, of course, have the right to recover damages from the seller for failing to deliver vacant possession.

An innocent party would be one who acquires an interest in the property without notice of a potential claim for possession, if the owning spouse made a false affidavit, stating that he or she was single. An innocent third party's rights would prevail over those of a spouse in occupation. Swearing a false affidavit is a criminal offence. Additional remedies available to a spouse whose home was sold without the required consent would be a claim for support and a claim for more

than an equal share on division of family assets. Where consent to a transaction is unobtainable because of absence or incapacity of the spouse, or where it is being unreasonably withheld, the court could dispense with the requirement of consent.

## Proposals for Restriction on Dealings

**Neither spouse should be able to sell or mortgage the matrimonial home without the other's consent, regardless of which of the spouses owns it. The consent for dealings with the home would have to be in writing. A transaction could be set aside if the third party knew or should have known that the seller was dealing with a home without the required consent. A court could dispense with the required consent if a spouse was incapable of giving it or was withholding it unreasonably.**

# PART IV—MARRIAGE CONTRACTS

No single set of rules governing property rights and support obligations of married persons will satisfy the needs and expectations of all married people. One way to make the system flexible is to offer spouses the choice of creating their own set of rules in a marriage contract.

## FREEDOM TO VARY STATUTORY PROPERTY RIGHTS AND SUPPORT OBLIGATIONS

### Existing Law

Spouses who find a property system they prefer to the statutory property rules may wish to detail in a marriage contract their respective property rights during marriage, separation or divorce or on the death of one of them. They may also wish to outline their respective rights to support in the same situations, because support and property rights are closely related issues.

Spouses are now able to make agreements setting out their specific property rights during marriage; for example, that property be transferred from one spouse to the other or that any matrimonial home purchased by either will be jointly owned.

The status of marriage contracts on support obligations during marriage is unclear. Generally, a husband cannot contract out of his obligations to support his wife, though he and his wife can set out in a marriage contract how this obligation will be met, as in a monthly allowance for food and clothing.

Spouses may contractually agree on the division of property upon the death of a spouse; for example, one spouse can promise to leave a specified sum to the other.

A marriage contract dealing with support obligations after the death of a spouse, such as a promise by the survivor not to make any claims against the estate of the deceased, is not void as an attempt by the deceased to renege on his or her support obligations. However, the courts may override any such agreement if it turns out the spouse requires support out of the estate for the necessities of life.

Spouses are not allowed to agree on rights to property and support should they separate or divorce. The courts have ruled these contracts void as contrary to public policy, because it was thought such agreements could encourage marriage breakdown. Of course, parties already separated may enter into separation agreements, outlining their respective rights to property and support. Separated spouses contemplating reconciliation may also contractually agree to property and support rights if the reconciliation should later fail.

## Ontario Law Reform Commission Recommendations

The Ontario Law Reform Commission proposes that spouses should be able to agree on particular terms to govern their relations with respect to property. The Commission does stipulate, however, that no marriage contract should be able to alter rights and obligations respecting the matrimonial home, support obligations and rights in the estate of a deceased spouse.

The Commission would allow a couple to vary their joint ownership interests in a matrimonial home by agreement, express or implied, but it is unclear whether it could only relate to one matrimonial home or all future matrimonial homes.

## Proposals

A contract dealing with property rights after the breakdown of a marriage but before the couple are separated and living apart is void. A similar contract entered into just after the couple separates is valid and enforceable. There is no justification for these different results; separation agreements facilitate spouses living separate and apart as much as marriage contracts providing for a future separation do.

Spouses should be encouraged to consider the possibility of their marriage breaking down. In this way, if a rift should occur, the couple

would be better prepared to cope with it, emotionally and financially, and the transition from marriage to single status would be less traumatic.

As mentioned earlier, the Ontario Law Reform Commission recommends that couples should not be free to contract out of their rights to the matrimonial home. Since the matrimonial home is often a family's main capital asset, a couple's so-called freedom to agree on their property relations would be largely meaningless if they could not make a contract concerning the matrimonial home. Furthermore, the contractual freedom now enjoyed by couples under the law would be significantly reduced. The degree of contractual freedom, or conversely, the amount of state protection given spouses, would vary. Apartment dwellers with money invested in items other than land would have much more contractual freedom and less statutory protection than spouses whose main asset was their home. Freedom of contract for a married couple should not depend on the kind of property they own.

The Commission also recommends that people should not be free to contract out of their rights in the estate of their deceased spouse. However, a spouse's automatic rights in the estate arise only if the deceased spouse dies without a will. A person is free not to will any property to his or her spouse, subject to dependants' relief legislation. It would be inconsistent to preclude couples from making a marriage contract with the same effect, subject to the same statutory protection.

**We propose that spouses may by marriage contract outline property rights and support obligations during marriage, upon the death of one of them, and in the event of a future separation or divorce. A marriage contract would be subject to variation by a court if it was entered into under fraud, duress or undue influence, or if it resulted in one of the spouses becoming eligible for welfare.**

## THIRD PARTIES

The Ontario Law Reform Commission recommends a registration system for marriage contracts so that third parties dealing with the spouses could discover the property rules to which they are subject. This would add complexities, effort and expense for spouses, third parties and government. Adequate protection will be provided without a registration system under the following rules:

1. The procedures for possessory rights and controls over dealings

with a matrimonial home proposed under Part III above would apply in every case.

2. Where other property (especially land) is registered, a third party is entitled to rely on a transfer from the spouse holding registered title.
3. Where property is not registered, the ordinary rules for transfers of property apply. Under those rules, any person buying property must confirm the seller's title as best he can.

## FREEDOM TO MAKE ARRANGEMENTS REGARDING CHILDREN

### Existing Law

Under the old law, the father of legitimate children had the paramount right to their custody and control. The courts upheld this right, even if it was in the child's best interest to be with the mother. In 1923, *The Infants Act* was amended so that the father and mother were made joint guardians and equally entitled to the custody, control and education of an infant. This transition from the unilateral right of a father to the bilateral rights of both parents to custody put increased emphasis on the child's welfare as a criterion of custody awards, and it finally became the paramount consideration by the courts.

When the father's right was virtually absolute, any agreement by which he gave up custody of his child, or renounced his rights and duties as a parent, was illegal and contrary to public policy. As the welfare of the infant became the most important consideration, agreements whereby the father relinquished his custody rights were upheld, if they were in the child's best interests. Presumably comparable agreements now entered into by mothers would be similarly treated.

Contractual provisions for the custody and support of children are normally included in separation agreements. These contracts are valid and enforceable under Ontario law. However, the courts may override any contract concerning children, if the agreement is not in the infant's best interests.

### Proposals

Separation agreements are useful devices in reducing fighting between spouses over custody. Marriage contracts outlining the spouses' respective custody rights and support obligations in the event of

separation or divorce could serve the same useful purpose.

Interspousal contracts covering custody and support of the children of the marriage, concluded while the parents are cohabiting, are held void as contrary to public policy; those entered into after separation are valid. There is no justification for the different treatment of such contracts, because the overriding policy consideration is the children's welfare. Whether the parents are living together, planning to separate, or already separated should not be the determining variable.

Any separation agreement between spouses can be overridden by the court on custody, access rights and child support, if it is not in the infant's best interests. Marriage contracts dealing with children could be subject to the same review by the courts. In this way, interspousal fighting and litigation would be reduced, without jeopardizing the welfare of the children.

With the increased number of mixed marriages, more couples will want to agree before marriage on the religious education of their children.

If one person states that he or she will only marry or have children if those children will be raised in a particular religious faith, and the other party agrees and the marriage takes place or children are born on this basis, it appears unfair to the first party if the agreement is not supported by the courts. The courts can give more support than they do, without in any way jeopardizing the welfare of the infants under their jurisdiction.

**We propose that spouses may by marriage contract agree to matters respecting access to and custody, support, education and religion of the children of their marriage, but that such contracts should be subject to the discretion of the court to override them if they are not in the children's best interest.**

## FORMALITIES OF A MARRIAGE CONTRACT

An ancient statute still in force in Ontario, *The Statute of Frauds*, provides that an agreement regarding a future marriage is not enforceable unless it is in writing. The agreement can be written down after it has been made (even after the marriage takes place) to enable its enforcement.

Oral agreements between spouses after marriage are enforceable if they do not deal with ownership of land. Whether or not the agreement is made after the marriage, the statute still requires it to be in writing if its performance will take more than a year.

The formal requirements demanded for marriage contracts should facilitate proof of the existence and terms of any contract, if a dispute arises later. Second, they should ensure, as far as possible, that the parties understand the nature and significance of their agreement.

There are two factors which support the allowance of oral marriage contracts. Spouses are apt to agree between themselves, but not commit these agreements to writing, because they fully trust each other and do not anticipate having to prove them formally. Also, regardless of publicity about the law relating to marriage contracts, there will be many people in Ontario who are unaware of the details—for instance, that a marriage contract must be in writing to be valid—and they will innocently make oral agreements, considering them binding when in fact they are unenforceable.

On the other hand, it is very difficult to prove an oral contract—especially a contract regarding personal matters between married persons. It would be beneficial to many spouses to require marriage contracts in writing, so that if the spouse arranges his or her affairs on the basis of such a contract, he or she will be able to prove its existence if a disagreement erupts. In deciding whether marriage contracts must be written, the needs of those less sophisticated and knowledgeable must be balanced against the desire to have a simple, workable system which minimizes uncertainty and litigation.

*The Statute of Frauds* is really designed to facilitate proof of contracts, but it is inadequate in this regard. Although it requires all marriage contracts made *before* marriage to be in writing, it applies this rule only to *some* contracts made *after* marriage.

It must be remembered that (a) people often sign documents they have not read; (b) husband and wife are often not in equal bargaining positions and undue influence may be exerted because of the marital relationship; and (c) that the spouses might not fully appreciate the long term repercussions of the marriage contract.

Marriage contracts could be required to be executed before a lawyer who could be legally bound to ensure that the parties understood the importance of the document. The solicitor could be required to swear an affidavit that both spouses have been advised of their rights under Ontario family law, and informed of the significance of the marriage contract. A notary could do this by having a spouse read and sign a form prescribed by statute in which these points are explained. Independent legal advice could be required for all contracting spouses. A similar procedure is used in the western provinces, when a spouse releases homestead rights.

While such procedures may be desirable, we have chosen not to require that the document be executed before a notary public or solicitor. If such a requirement became essential to the validity of the contract, it would put prospective spouses to expense and inconvenience which might discourage marriage contracts.

**We propose that the contract must be in writing and signed before at least one witness, for the purpose of proof of the signatures of the parties. We propose to undertake a public education campaign to bring to the attention of prospective spouses the importance and consequences of entering into a marriage contract.**

# PART V—GHOSTS OF THE COMMON LAW

## THE COMMON LAW

Much of Ontario's law stems from decisions of the courts, rather than federal or provincial government statutes, and includes decisions of English courts, some of them centuries old. This judge-made law is known as common law.

Some common law doctrines in family law are now merely ghosts in the attic. On occasion, however, they can be heard to rattle their chains, and they ought to be laid to rest.

## CRIMINAL CONVERSATION

A husband has the right in common law to sue a third party for adultery with his wife (criminal conversation); a wife has no such redress for her husband's adultery.

In Part 1 of its Report on Family Law, the Ontario Law Reform Commission stated that this action has "no place in our legal system", and that "the placing of a price on sexual conduct between a person's spouse and a third person belongs to a past age." The Commission considered and rejected making the action available to a wife as well as a husband, saying "giving both husband and wife equal benefit of ... uncivilized, unworkable and outmoded laws is no reform." This action was abolished in England in 1970.

**We propose that the action for criminal conversation be abolished.**

## ENTICEMENT AND HARBOURING OF A SPOUSE

These are two more common law actions. Enticement gives the right to sue a third party who entices one spouse to leave the other. Harboring is based upon a third party taking in or giving shelter to a woman who has left her husband; no enticement is necessary. The action for enticement is available to both spouses. The action for harboring is available only to husbands. The Ontario Law Reform Commission, in its Report on Family Law, Part 1, suggested these actions which are almost extinct have no deterrent effect, and are potential devices for blackmail or revenge. They were abolished in England in 1970.

**We propose that the actions for enticement and harbouring of a spouse should be abolished.**

## ENTICEMENT, HARBOURING, SEDUCTION AND LOSS OF SERVICES OF A CHILD

These four common law actions are based on the theory that a parent has a proprietary interest in the services of his child. The enticement and harboring actions are analogous to those described above. In the seduction action, a parent sues the seducer of his daughter, allegedly for the financial loss resulting from the loss of this daughter's services. In fact, however, the financial loss may only be a slim pretext for seeking punitive damages against the seducer, and damages for the parent's mental distress caused by the dishonour of his child. In Ontario, *The Seduction Act* creates a conclusive statutory presumption that services were performed by the daughter.

The claim for loss of services arises when a third party wrongfully injures a child and thus denies the parent the child's services. Again, the parent must demonstrate a loss of services, but usually this requirement has been satisfied by establishing that the child performed services in the home.

The English Law Commission and the Ontario Law Reform Commission have recommended the abolition of the enticement and harboring actions, as outmoded concepts. Both Commissions have also recommended the abolition of the seduction and loss of services

actions for the same reason: "the extension of the master's right to the services of his servant to the parent-child relationship does not belong to this century." However, in some cases wrongful conduct of a third party injuring a child should be actionable. These situations are considered below and the proposed new cause of action outlined as well.

**We propose that the actions for enticement, harbouring, seduction, and loss of services of a child be abolished and replaced by a new action for damages caused by wrongful conduct which results in injury to a child.**

## LOSS OF CONSORTIUM

A husband may recover damages for loss of his wife's "consortium" against a third party who caused her injury, for loss of his wife's services, her society and companionship, medical and convalescence expenses. No such action is available to a wife for injuries to her husband.

This action is an anachronism, based on the outmoded concept that a husband owns the services of his wife, and making it available to wives would merely compound the anachronism.

Outright abolition of the action might be going too far, however. A claim for expenses incurred in caring for a spouse who was injured by a third party's negligence seems reasonable, and has been recommended by both the English Law Commission and the Ontario Law Reform Commission.

**We propose that the action for loss of consortium be abolished and replaced by a new action for damages caused by wrongful conduct which results in injury to a spouse.**

## NEW ACTION FOR INJURIES TO FAMILY MEMBERS

If the actions for loss of services and loss of consortium are abolished, some damages incurred by family members will not be compensated for under the common law. For example, if a married couple and their child are injured in a car accident because of the negligence of a third party, the father has several causes of action against the wrongdoer. He can claim for loss of earnings, medical expenses and other nonpecuniary claims for his injuries, the loss of his wife's services and consortium and medical and increased living expenses incurred on her behalf. His ability to recover medical expenses arises from his obligation under the law to support her.

If the wife incurred similar expenses on her husband's behalf, she could not recover them because she has no legal right to her husband's services or consortium, and no obligation to support him.

A parent could recover for loss of his child's services, medical expenses and increased living expenses incurred on the child's behalf. The child could sue for any expenses for which he was legally responsible. Some judicial decisions say that a parent's claims on a child's behalf depend in strict common law on the loss of the child's services: if the child is too young to render services, the parent has no claim except for necessary medical expenses.

As mentioned earlier, recovery should continue to be available for living and visiting expenses incurred by families when one of their number is injured by a wrongdoer. The English Law Commission and Ontario Law Reform Commission suggested an action for any pecuniary loss, including the pecuniary benefits the spouse or child could reasonably be expected to have conferred if injury had not occurred, and the monetary loss of paying for services which would otherwise have been free. The Commission based its recommendation on the structure of *The Fatal Accidents Act*, saying that an injury causing pecuniary loss which is actionable when it results in death should be actionable on exactly the same basis if it does not result in death. The new action would parallel exactly the *Fatal Accidents* legislation, which appears to be working well, and would benefit from the court decisions built up under that Act over the last 60 years.

**We propose that a new cause of action be created in which a parent, stepparent, grandparent, child, stepchild, grandchild, brother or sister could recover damages incurred as a result of an injury to another member of the same family. The measure of damages would be all pecuniary loss incurred as a result of the injury, less the proportion attributable to the contributory negligence of the injured party.**

## MARRIED WOMAN'S DOMICILE

In legal terms, a person's domicile is, roughly speaking, the jurisdiction which is his or her permanent home. Domicile can be very important, because it determines under what system of law a person's estate on death is distributed or what jurisdiction's matrimonial property system controls the economic relationship between that person and his or her spouse.

Under the common law, a married woman is considered incapable of acquiring a domicile of her own. She shares the domicile of her

husband throughout her married life, because the common law regards the married couple as one person (the husband), even when the marriage breaks down and the spouses separate. Even if the husband remains in the matrimonial home in Australia and his wife and children have moved to Canada, the wife and children are deemed to be domiciled in Australia.

**We propose that this unrealistic view of the status of a married woman should be abolished. A married woman would be capable of acquiring a domicile in the same way as any other adult person, and the domicile of minor children living permanently with only one of their parents would be deemed to be the domicile of that parent, regardless of the sex of that parent.**

## PART VI—CHILDREN

The reforms advocated in this paper and in *The Succession Law Reform Act* place children born outside marriage on an equal footing on the right to support and the right to inherit or claim support from an estate. We propose to continue reform in this area with legislation which will declare the equal status of children for all purposes of the law of Ontario, whether they were born within or outside marriage. The rights of children born outside marriage will, of course, require effective legal means for ascertaining the parentage of a child.

Under the family assets approach proposed above, a judge could order the transfer of certain assets to a child upon the breakdown of a marriage. The right of a child to receive support has also been broadened.

Other basic reforms of the law relating to children now being considered include statutory guidelines to assist judges in determining the best interests of the child in custody disputes, provisions for enforcement of custody orders, and recommendations for effective legal representation of the child. A review of guardianship, including provisions for the appointment of guardians in a will, is also being undertaken. All of these reforms are part of a comprehensive approach to family law which is responsive to the needs of modern family life.

# PART VII— APPLICATION OF THE NEW RULES

## The Issue

Should the new rules for matrimonial property, support and rights in the home apply only to those who marry in the future, or should they have full or partial application to those already married? Clearly it would be desirable to have only one set of rules governing married couples, but each Part of this paper requires consideration of different policy questions in reaching this decision.

## Support Obligations And The Matrimonial Home

It is generally agreed that reform of the law of support should govern existing marriages. Proposed new rights to possession of and control over dealings with the matrimonial home are intended as additional insurance that shelter will be provided for the family. It would therefore be logical to extend those new rights to existing marriages as well.

The Ontario Law Reform Commission recommendations for co-ownership and possessory rights in the matrimonial home were to apply expressly to existing matrimonial homes. The proposal of the Law Reform Commission of Canada was that any discretionary matrimonial property provisions also apply to existing property rights. The legislation in England, which came into force about five months after passage, extended to existing homes.

Concepts and procedures similar to (though narrower than) those embodied in the new legislation already exist under dower and *The*

*Married Women's Property Act*. The recommended provisions attempt to remedy the inadequacies of the existing laws, to conform with the needs of married couples today. Reform of laws that are now in a "state of horrid confusion", to use the words of one of our judges, should not wait any longer.

## Matrimonial Property

In deciding whether the matrimonial property rules would apply to existing marriages, it should be remembered that a couple could contract out of the statutory system. Also, the system would have no effect at all on the spouses' capacity to acquire and deal with property or their separate ownership of it, unless their marriage broke down.

One of the problems with the existing law is that property and support issues are dealt with separately, although they ought logically to be considered together to give a court a true picture of the economic circumstances of the family. This would be greatly facilitated if the new rights and procedures were available in both support and property proceedings for all couples.

England, Australia and New Zealand have all adopted judicial discretion as their property system, without the option of marriage contracts. When those three jurisdictions adopted their new property law, they made it applicable to existing marriages. Ontario's system of sharing family assets is closely akin to the judicial discretion system.

## Proposal

**We propose to make all of the new rules put forward in this paper fully applicable to existing marriages, after a period of several months during which an extensive campaign of public education would be conducted to familiarize Ontario residents with the new rules. To do otherwise would be to postpone reform for yet another generation.**

# SUMMARY OF PROPOSALS

## MATRIMONIAL PROPERTY

The family assets system will be adopted as the basic system governing property relations between husband and wife in Ontario. The new system will apply only in the absence of a marriage contract between the spouses.

Under this system, "family assets" include property owned by one or both spouses and ordinarily used by them or their children for shelter or transportation or for household, educational, recreational social or aesthetic purposes. Family assets will be subject to a basic rule of equal sharing on marriage breakdown, but a spouse may obtain a greater share of family assets or a share of other property if an equal division of family assets would be inequitable in the circumstances. The family assets system of sharing matrimonial property will apply only while both spouses are alive, and only in a marriage breakdown situation. Where there is no marriage breakdown, the spouses will remain free to acquire, deal with and dispose of property as under the existing law (subject to the provisions respecting matrimonial homes set out below).

## SUPPORT OBLIGATIONS

The new legislation will allow a judge to order a spouse to support the other spouse to the extent he or she is reasonably able to do so, if that other spouse is unable to support himself or herself, having regard to certain statutory criteria such as the conduct, ages, health and financial resources of the spouses.

The conduct of the spouses will be a factor which a judge can take

into account, equally with other factors, in deciding whether to make an order for support and how much support should be awarded.

While the spouses are living together, each will have the right to make the other spouse jointly liable with him or her to third parties for necessities of life. The right of one spouse to pledge the other's credit could be terminated by notice to the creditors. Where a third party would be entitled to recover in a law suit against a minor for an amount owing for necessities of life, a parent of the minor will also be liable if he or she is liable to support the minor.

The court will have the same broad discretion it now has in making a support order under the *Divorce Act*, in which case a support order will terminate automatically on the death of either spouse unless the court exercises its discretion to award support for the life of the claimant spouse. Where the issue of support has not been raised in divorce proceedings, a provincial order for support will continue in effect.

The parental obligation to support a child will end at age 16, unless the child is unable to withdraw himself from parental control because of illness or other cause. Marriage of a child will also automatically end the parental obligation to support that child.

"Child" will be defined to include a natural child, whether born within or outside marriage, a stepchild and a child whom the person has a settled intention to treat as a child of his family.

Common law spouses will be entitled to claim support. The status of a common law spouse will be recognized after two years of cohabitation, or if there is some permanence to the relationship and the couple have a child.

Natural parents, stepparents and persons who have treated a child as a child of their family will be entitled to claim support from a child over 18.

Both an individual receiving support from public funds and the agency paying it will have the right to claim against a spouse, parent or child, as the case may be, who is not discharging an obligation of support.

Persons who undertake the care of someone whom another person is liable to support will be entitled to recover their reasonable expenses from that other person.

As a preliminary step toward a Unified Family Court with jurisdiction throughout Ontario, the distinctions between the support remedies available in different levels of courts will be abolished. A new

summary procedure will be instituted which will be available in provincial, county and Supreme courts, in a less adversarial atmosphere than currently exists.

A *dum casta* clause in a separation agreement will not bar a claim for support.

A procedure for attachment of wages will be adopted in Ontario by order of a court on default in payment under a support order.

Failure to pay under a support order when a person is able to do so will result in the defaulter being found in contempt of a court order. The contempt could be purged by payment as ordered, or by a fine or imprisonment for up to three months, in the discretion of the judge.

A procedure will be created to obtain a court order for disclosure from government or private records of the address of an individual who has been ordered to pay support. The address, and the address only, would be disclosed to a court officer.

## DOWER AND THE MATRIMONIAL HOME

Dower will be abolished and replaced by legislation to give both spouses rights in the matrimonial home.

Either spouse will have the right to seek a court order for possession of the matrimonial home and contents. This procedure will be available even though the spouses rent their home or hold only a life interest in it, and regardless of which of the spouses holds legal title. Before granting a possessory order, the court will have to satisfy itself that the provision of financial support is an inadequate remedy in the circumstances.

Neither spouse will be able to sell or mortgage the matrimonial home without the other's consent, regardless of which of the spouses owns it. The consent for dealings with the home will have to be in writing. A transaction could be set aside if the third party knew or should have known that the seller was dealing with a home without the required consent. A court could dispense with the required consent if a spouse was incapable of giving it or was withholding it unreasonably.

## MARRIAGE CONTRACTS

Spouses will be able to make a marriage contract outlining property rights and support obligations during marriage, upon the death of one of them and in the event of a separation or divorce. A marriage contract will be subject to variation by a court if it was entered into under fraud, duress or undue influence, or if it results in one of the spouses becoming dependent on welfare.

Spouses will be able to agree in a marriage contract on matters respecting access to and the custody, support, education and religion of the children of their marriage, but such contracts will be subject to the discretion of the court to override them if they are not in the children's best interest.

The contract must be in writing and signed before at least one witness, for the purpose of proof of the signatures of the parties.

## GHOSTS OF THE COMMON LAW

The action for criminal conversation will be abolished.

The actions for enticement and harbouring of a spouse will be abolished.

The actions for enticement, harbouring, seduction and loss of services of a child will be abolished and replaced by a new action for damages caused by wrongful conduct which results in injury to a child.

The action for loss of consortium will be abolished and replaced by a new action for damages caused by wrongful conduct which results in injury to a spouse.

A new cause of action will be created in which a parent, stepparent, grandparent, child, stepchild, grandchild, brother or sister could recover damages incurred as a result of an injury to another member of the same family. The measure of damages would be all pecuniary loss incurred as a result of the injury, less the proportion attributable to the contributory negligence of the injured party.

A married woman will be capable of acquiring a domicile in the same way as any other adult person, and the domicile of minor children living permanently with only one of their parents will be deemed to be the domicile of that parent, regardless of the sex of that parent.

## APPLICATION OF NEW RULES

All of the new rules put forward in this paper will be made fully applicable to existing marriages, after a period of several months during which an extensive campaign of public education will be conducted to familiarize Ontario residents with the new rules. To do otherwise would be to postpone reform for yet another generation.

The following pages contain a draft bill putting these proposals in legislative form. The proposed effective date for the new law is July 1, 1977.



**An Act to reform the Law respecting  
Property Rights and Support Obligations  
between Married Persons and in other  
Family Relationships**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

- (a) "child" means a child born within or outside marriage, subject to section 83 of *The Child Welfare Act* (which relates to the effect of adoption), and includes a stepchild and a person whom the parent has a settled intention to treat as a child of his or her family, but does not include a foster child placed in the home of a person under an agreement with a public agency; R.S.O. 1970,  
c. 64
- (b) "court" means the Unified Family Court, a county or district court or the Supreme Court;
- (c) "parent" means the father or mother of a child, and includes a stepparent and a person who has a settled intention to treat the child as a child of his or her family, but does not include a person in whose home the child was placed as a foster child under an agreement with a public agency; and
- (d) "spouse" means a person who is the husband or wife of another person, including a person in respect of whose marriage a judgment of nullity is subsequently made.

**2.—(1)** Where, in an application under any provision of this Act, it appears to the court that for the true determination of the affairs of the spouses it is necessary or desirable to have other matters under this Act first or Combining of  
application

simultaneously determined, the court may direct that the application stand over until such other applications are brought or determined as the court thinks fit.

**Applications** (2) An application under this Act may be made by originating notice, by an action or in another proceeding.

**Consent orders** (3) Upon the consent of the parties in an application under this Act, the court may make any order that the court is otherwise empowered to make by this Act.

**Capacity of minors** (4) A minor who is or has been a spouse has capacity to make, conduct and defend an application under this Act without the intervention of a next friend or guardian *ad litem*.

**Application of Act subject to contract** (5) This Act applies except in so far as a marriage contract made in accordance with Part IV contains a stipulation that is contrary thereto, but any matter provided for in a marriage contract may be incorporated in an order made under this Act.

## PART I

### FAMILY PROPERTY

**Interpretation** 3. In this Part,

(a) “family assets” means property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses or one or more of their children for shelter or transportation or for household, educational, recreational, social or aesthetic purposes, and includes,

(i) money in an account with a chartered bank, savings office, credit union or trust company where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes,

(ii) where property owned by a corporation or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation or an interest in the trust owned by the spouse having a market value equal to the value of the property,

(iii) property over which a spouse has, either alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself, if the property would

be a family asset if it were owned by the spouse, and

- (iv) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person a power to revoke the disposition or a power to consume, invoke or dispose of the property, if the property would be a family asset if it were owned by the spouse,

but does not include land that is excluded from the matrimonial home under subsection 4 of section 36;

- (b) "property" means real or personal property or any interest therein.

4.—(1) Subject to subsection 2, where a judgment *nisi* Division of family assets of divorce is pronounced or a marriage is declared a nullity or where the spouses are separated and there is no reasonable prospect of the resumption of cohabitation each spouse is entitled to have the family assets divided in equal shares notwithstanding the ownership of the assets by the spouses as determinable for other purposes and notwithstanding any order under section 7.

(2) Where, upon the application of a spouse, the court Variation of division is of the opinion that a division of the family assets in equal shares would be inequitable, having regard to,

- (a) any agreement between the spouses;
- (b) the duration of the marriage;
- (c) the date when the property was acquired;
- (d) the extent to which property was acquired by one spouse by inheritance or by gift; or
- (e) any other circumstance relating to the acquisition, preservation, maintenance, improvement or use of property rendering it inequitable for the division of family assets to be in equal shares,

the court may,

- (f) make a division of family assets resulting in shares that are not equal; or

- (g) order other property of a spouse to be transferred to or vested in the other spouse, as the court considers appropriate.

**Purpose of**

(3) The purpose of this section is to recognize that inherent in the marital relationship there is mutual contribution by the spouses, whether financial or otherwise, to the family welfare, entitling each spouse to an equal division of the family assets upon termination of the marriage, subject to the equitable considerations set out in subsection 2.

**Powers of  
court**

**5.—**(1) The court may, upon application, determine any matter respecting the division of family assets between spouses.

**Idem**

(2) In an application under this section, the court may order,

- (a) that the title to any specified property directed to a spouse in the division be transferred to or in trust for or vested in the spouse whether absolutely, for life or for a term of years;
- (b) the partition or sale of any property that is the subject of division;
- (c) that payment be made out of the proceeds of sale to one or both spouses, and the amount thereof;
- (d) that any property forming part of the share of either or both spouses be transferred to or in trust for or vested in a child to whom a spouse owes an obligation to provide support;
- (e) that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property;
- (f) that either spouse pay to the other such sum as is set out in the order for the purpose of adjusting the division,

and may make such other orders or directions as are ancillary thereto.

**Interim  
orders for  
preservation  
and possession**

(3) In or pending an application under this section, the court may make such interim order as it considers necessary for restraining the dissipation of family assets and for the possession, delivering up, safekeeping and preservation of the property.

**6.** Sections 4 and 5 apply to persons whose marriage to each other is terminated by a judgment absolute of divorce or is declared a nullity for a period of six months after the judgment. Limitation

**7.—**(1) Any person may apply to the court for the determination of any question between that person and his or her spouse or former spouse as to the ownership or right to possession of any particular property, except where an application is pending or an order has been made respecting the property, under section 4 or 5, and the court may, Determination of questions of title between married persons

- (a) declare the ownership or right to possession;
- (b) where the property has been disposed of, order payment in compensation for the interest of either party;
- (c) order that the property be partitioned or sold for the purpose of realizing the interests therein; and
- (d) order that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property,

and may make such other orders or directions as are ancillary thereto.

(2) In the determination of a question under subsection 1, where one spouse has contributed work, money or money's worth in respect of the acquisition, management, maintenance, operation or improvement of property in which the other has an interest, the court may by order, Recognition of contribution

- (a) direct the payment of an amount in compensation therefor; or
- (b) award an interest in the property appropriate to the contribution. 1975, c. 41, s. 1 (3) (c), *amended*.

(3) In an application under this section, the court may make such interim order as it considers necessary for restraining the dissipation of the property and for the possession, delivering up, safekeeping and preservation of the property. Interim orders for preservation

**8.** The rule of law applying a presumption of advancement in questions of the ownership of property as between husband and wife is abolished and in place thereof the rule of law Presumptions

applying a presumption of a resulting trust shall be applied in the same manner as if they were not married, except that,

- (a) the fact that property is placed or taken in the name of spouses as joint tenants shall be *prima facie* proof that a joint tenancy of the beneficial interest in the property is intended; and
- (b) money on deposit in a bank, savings office, credit union or trust company in the name of both spouses shall be deemed to be in the name of the spouses as joint tenants for the purposes of clause *a.* 1975, c. 41, s. 1 (3) (d).

Application  
of Part

**9.** This Part applies notwithstanding that,

- (a) the spouses entered into the marriage before this Part comes into force; or
- (b) the property in issue was acquired before this Part comes into force,

but does not apply in respect of property rights that are in issue in a proceeding that was commenced before this Part comes into force.

Conflict  
of laws

**10.**—(1) The division of family assets and the ownership as between spouses of movable property wherever situate are governed by the internal law of the place where both spouses had their last common habitual residence or, where there is no place where the spouses had a common habitual residence, by the law of Ontario.

Idem

(2) The ownership of immovable property as between spouses is governed by the internal law of the place where the land is situated, but where the law of Ontario is applicable respecting the division of family assets, the ownership of the property may be taken into consideration for the purposes of sections 4 and 5.

## PART II

### SUPPORT OBLIGATIONS

Interpre-  
tation

**11.** In this Part,

- (a) “court” means a court as defined in section 1, and includes a provincial court (family division);

- (b) “dependant” means a person to whom another has an obligation to provide support under this Part;
- (c) “spouse” means a spouse as defined in section 1, and includes either of a man and woman,

- (i) whose marriage was terminated by a judgment absolute of divorce or declared a nullity within the preceding six months and who has not remarried, or
- (ii) who, not being married to each other, have lived together as husband and wife within the preceding six months and had so lived together,

1. continuously for a period of not less than two years, or

2. in a relationship of some permanence where there is a child born of whom they are the natural parents.

**12.** Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so. Obligation of spouses to support

**13.** Every parent has an obligation, to the extent the parent is capable of doing so, to provide support, in accordance with need, for his or her child who is unmarried and, Obligation of parent to support child

- (a) is under the age of sixteen years ; or

- (b) is of the age of sixteen years or over but unable, by reason of illness, disability or other cause to withdraw from the charge of his or her parents or to provide himself or herself with necessities of life.

**14.** Every child who is not a minor has an obligation to provide support for his or her parent, in accordance with need, to the extent that the child is capable of doing so. Obligation of child to support parent

**15.—(1)** A court may, upon application, order a person to provide support for his or her dependants and determine the amount thereof. Order for support

(2) An application for an order for support may be made by the dependant or by any public agency having responsibility for the provision of support out of public money or Applicants

by any person, institution or agency that has undertaken to provide support for the dependant.

Determin-  
ation of  
amount

(3) In determining the amount of support, the court shall consider all the circumstances of the parties, including,

- (a) the assets and means of the dependant and of the respondent;
- (b) the capacity of the dependant to provide for his or her own support;
- (c) the capacity of the respondent to provide support;
- (d) the needs of the dependant, in determining which the court may have regard to his or her accustomed standard of living;
- (e) the desirability for the dependant to have special assistance to achieve a program for financial independence;
- (f) the obligation of the respondent to support any other person;
- (g) any course of conduct by the applicant tending to repudiate the relationship;
- (h) where the dependant is a child, his or her reasonable prospects of obtaining an education;
- (i) where the dependant is a child, his or her withdrawal from the control of both parents;
- (j) where the dependant is a spouse, the effect on his or her earning capacity of the responsibilities assumed during cohabitation; and
- (k) any other source of support for the dependant other than out of public money.

Powers of  
court

**16.**—(1) In an application under section 15, the court may order,

- (a) an amount payable periodically, whether annually or otherwise and whether for an indefinite or limited period or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;

- (c) any specified property to be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) the securing of lump sum or periodic payments;
- (e) the charging of property with payment under an order;
- (f) payment of support to be made in respect of any period before the date of the order;
- (g) the payment to a public agency of any amount in reimbursement for an allowance granted in respect of the support of the dependant, including an amount in reimbursement for an allowance paid before the date of the order,

or any combination thereof.

(2) Where an application is made under section 15, the court may make such interim order as the court considers appropriate, including an interim order, *ex parte* for periodic payments for a period not exceeding thirty days. Interim orders

(3) An order for support is assignable to a public agency referred to in clause g of subsection 1. Assignment of support

**17.**—(1) Where an order for support has been made under section 16, and where the court is satisfied that there has been a material change in the circumstances of the dependant or the respondent or evidence has become available that was not available on the previous hearing, the court may upon application discharge, vary or suspend any term of the order, prospectively or retroactively, relieve the respondent from the payment of part or all of the arrears or any interest due thereon and make such other order under section 16 as the court considers appropriate in the circumstances. Review of orders

(2) The accustomed standard of living of a dependant considered for the purposes of subsection 1 shall be the accustomed standard of living prior to the making of the original order. Accustomed standard of living for review purposes

(3) No application under subsection 1 shall be made within six months after the disposition of any other application Limitation on applications for review

under subsection 1 in respect of the same order, except by leave of the court.

**Existing orders**

(4) This section applies to alimony or maintenance orders made before this section comes into force.

**Restraining orders**

**18.** In or pending an application under section 15, or where an order for support has been made, the court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support.

**Statement of financial affairs**

**19.—**(1) Where an application under section 15 is made, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of financial information in the manner and form prescribed by the rules of the court.

**Order for sealing statement**

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential by the parties and not form part of the public record.

**Access to records**

**20.—**(1) Where it appears to a court that a person in whose favour a support order is made has need for enforcement purposes to learn or confirm the whereabouts of the person against whom the order is made, the court may order any person or public agency to provide such particulars of the address as are in its knowledge or custody and the person or agency shall provide such particulars as it is able to provide based upon the information given for the purpose.

**Section binds Crown**

(2) This section binds the Crown.

**Filing order in family court**

**21.—**(1) An order for support made under this Part may be filed in the office of the Unified Family Court or any provincial court (family division) and upon being filed the clerk of the court may take any action on behalf of and in the name of the person entitled to support under the order as such person is entitled to take.

**Powers of court for enforcement**

(2) A provincial court (family division) and the judges thereof have the power to issue execution and garnishment and enforce orders for support filed in the court under subsection 1 in the same manner as small claims courts and the judges thereof, but without monetary limitation.

**22.**—(1) Where there is default in payment under an order for support, a clerk of the Unified Family Court or a provincial court (family division) may issue a summons requiring the debtor to appear before that court to submit to an examination as to his assets and means and to explain the default.

Examination  
of debtor

(2) If the debtor fails to appear as required after being served with a summons, or if the court is satisfied that the debtor intends to leave Ontario without appearing as required after being served, the court out of which the summons was issued may issue a warrant for the arrest of the debtor for the purpose of compelling attendance.

Compelling  
attendance

**23.**—(1) Where the court is satisfied, upon the examination of the debtor under section 22, that the default was due to wilful refusal to pay, the court may impose a fine not exceeding \$1,000 or imprisonment for not more than three months or until the default is cured, or both a fine and imprisonment.

Penalty  
for wilful  
default

(2) The imposition of a penalty under subsection 1 may be made conditional upon default in the performance of an undertaking and an order for imprisonment may provide for the imprisonment to be served intermittently.

Conditions  
of sentence

**24.**—(1) If the court considers it appropriate upon the examination of the debtor under section 22, the court may make an attachment order directing the employer of the debtor to deduct from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due such amount as is named in the order, not exceeding the maximum available for seizure or attachment under *The Wages Act*, and to pay the amounts deducted into court.

Attachment  
of wages

R.S.O. 1970,  
c. 486

(2) An order under subsection 1 has priority over any other seizure or attachment of wages arising before or after the service of the order.

Priority  
of order

**25.** If the court considers it appropriate upon the examination of the debtor under section 22, the court may order the debtor to give security for the payment of support or charge any property of the debtor therewith.

Security  
for  
payment

**26.** Where a marriage is terminated by a judgment absolute of divorce or declared a nullity and the question of support was not an issue in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms.

Effect of  
judgment  
for divorce  
or nullity

Right to  
recover  
expenses  
of support

**27.** Any person who undertakes the support of another whom he does not have an obligation to support under this Part is entitled to recover his reasonable expenses therefor from any person who has an obligation to provide the support under this Part.

Arrears  
payable by  
estate

**28.** Where an order for support is terminated by the death of the person who has the obligation to provide the support, the liability for arrears under the order coming due and unpaid in the preceding twelve months is a debt of his or her estate.

Pledging  
credit for  
necessaries

**29.**—(1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessities of life, except where the spouse has notified the third party that he or she has withdrawn the authority.

Liability  
for  
necessaries  
of minor

(2) Where a person is entitled to recover against a minor under sixteen years of age in respect of the provision of necessities, each parent who has an obligation to support the minor is liable therefor jointly and severally with the minor.

Recovery  
between  
persons  
jointly  
liable

(3) Where persons are jointly and severally liable with each other under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

Common  
law  
supplanted

(4) The provisions of this section apply in place of the rules of common law by which a wife may pledge the credit of her husband.

Order  
restraining  
harassment

**30.** Upon application therefor, a judge of the county or district court or a judge of the High Court may make an order restraining the spouse of the applicant from molesting, annoying or harassing the applicant or children in the lawful custody of the applicant.

Custody of  
children

**31.**—(1) Upon application, the court may order that either parent or any person have custody of or access to a child, in accordance with the best interests of the child and may at any time alter, vary or discharge the order.

Interim  
orders

(2) Where an application is made under subsection 1, the court may make such interim order as the court considers appropriate.

Right of  
dependants  
to sue in  
tort

**32.**—(1) Where a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, children, grandchildren,

parents, grandparents, brothers, sisters, stepbrothers and stepsisters of the person are entitled to recover from the person whose fault or neglect caused the injury or death their pecuniary loss resulting from the injury or death, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1970, c. 164, s. 3 (1), *amended*.

(2) In an action under subsection 1, the right to damages is subject to any apportionment of damages due to contributory fault or neglect of the person who was injured or killed. *New*. Contributory negligence

(3) Not more than one action lies under subsection 1 for and in respect of the same occurrence, and no such action shall be brought after the expiration of two years from the time the cause of action arose. R.S.O. 1970, c. 164, s. 5; 1975, c. 38, s. 1. One action and limitation of actions

(4) Where an action is commenced under subsection 1, the plaintiff may, in his statement of claim, name and join the claim of any other person who is entitled to maintain an action under subsection 1 in respect of the same injury or death and thereupon such person becomes a party to the action. Joining claims

(5) Each plaintiff who commences an action under this section shall file with the statement of claim an affidavit stating that to the best of his knowledge, information and belief the persons named in the statement of claim are the only persons who are entitled or claim to be entitled to damages under subsection 1. R.S.O. 1970, c. 164, s. 6 (1, 2), *amended*. Affidavit

(6) In assessing the damages in an action brought under this section, the court shall not take into account any sum paid or payable as a result of the death or injury under a contract of insurance. R.S.O. 1970, c. 164, s. 3 (2, 3), *amended*. Assessment of damages, insurance

(7) For the purposes of this section, damages may be awarded for reasonable expenses actually incurred for the burial of the person in respect of whose death the action is brought. Funeral expenses

**33.** An appeal lies from an order of the provincial court (family division) under this Part to the county or district court in the county or district in which the provincial court (family division) is situated. Appeal from provincial court (family division)

**34.** In addition to its powers in respect of contempt, every provincial court (family division) may punish by fine or imprisonment, or by both, any wilful contempt of or Contempt of orders of provincial court (family division)

resistance to its process, rules or orders under this Part, but the fine shall not in any case exceed \$1,000 nor shall the imprisonment exceed three months.

### PART III

#### MATRIMONIAL HOME

Interpre-  
tation

**35.** In this Part, "property" means real property and includes a home that is personal property.

Matrimonial  
home

**36.**—(1) The property in which a married person has an interest and that is or has been occupied by the married person and his or her spouse as their family residence is the matrimonial home.

Idem,  
where two  
or more

(2) Where two or more properties are matrimonial homes under subsection 1, only the two properties that are the principal family residences are the matrimonial homes.

Ownership

(3) The ownership of a share or of an interest in a share of a co-operative housing corporation entitling the owner to the occupation of a housing unit owned by the corporation shall be deemed to be the ownership of an interest in the unit for the purposes of subsection 1.

Residence  
on farmland,  
etc.

(4) Where the land on which a matrimonial home is situate is normally used for a purpose other than residential only, the matrimonial home includes only such portion of the land as may reasonably be regarded as necessary to the use and enjoyment of the residence.

Right to  
possession

**37.** Each spouse has an equal right to possession of the matrimonial home.

Consent to  
alienation

**38.**—(1) No spouse shall dispose of or encumber his or her interest in the matrimonial home without the consent of the other spouse in writing in the form prescribed by the regulations.

Setting  
aside  
transaction

(2) Where a spouse disposes of or encumbers his or her interest in the matrimonial home without the consent of the other required by subsection 1, the transaction may be set aside on an application under section 39 unless the person holding the interest at the time of the application acquired it for value, in good faith and without notice that the property was at the time of the disposition the matrimonial home.

Duty to  
inquire

(3) Where a person acquires an interest in property from a married person or from a person claiming under a pre-

decessor in title who was at the time of the disposition by him a married person, and

(a) the spouse did not join in the transaction or consent thereto in writing; and

(b) the transaction was not authorized by court order,

the person acquiring the interest is put upon his inquiry to determine whether the property is or was the matrimonial home and shall be deemed to have made sufficient inquiry where, the married person has affirmed by statutory declaration that the property had never been occupied as the matrimonial home.

(4) Where a lien, encumbrance or execution exists against property that is a matrimonial home, the spouse who is not the owner is entitled to any right to make payment or receive notice to which the spouse who is the owner is entitled.

Rights  
against  
lienholders

**39.** The court may, on the application of a spouse,

Powers of  
court  
respecting  
alienation

(a) determine whether or not property is the matrimonial home and, if so, its extent;

(b) authorize the disposition or encumbrance of the matrimonial home where the court finds that the spouse whose consent is required,

(i) cannot be found or is not available,

(ii) is not capable of giving or withholding consent, or

(iii) is unreasonably withholding consent,

subject to such terms and conditions including provision of other comparable accommodation or payment in place thereof as the court considers appropriate;

(c) direct the setting aside of any transaction disposing of or encumbering an interest in the matrimonial home without the required consent and the revesting of the interest or any part of the interest upon such terms and subject to such conditions as the court considers proper.

**40.**—(1) Notwithstanding the ownership of a matrimonial home and its contents, and notwithstanding section 37, the court on application may by order,

Order for  
possession  
of matri-  
monial home

- (a) direct that one spouse be given exclusive possession of the matrimonial home or part thereof for life or for such lesser period as the court directs;
- (b) direct that the contents of the matrimonial home or any part thereof remain in the home for the use of the person given possession;
- (c) authorize the disposition or encumbrance of the interest of a spouse in the matrimonial home subject to the right to exclusive possession of the other spouse as ordered.

Temporary possession

(2) An order may be made under subsection 1 for temporary relief or pending the bringing or disposition of another application under this Act.

Other provision for shelter

(3) An order for possession shall not be made under clause *a* of subsection 1 unless, in the opinion of the court, other provision for shelter is not adequate in the circumstances.

Interim order for preservation of property

**41.** In an application under this Part, the court may make such interim order as it considers necessary for the delivering up, safekeeping and preservation of the matrimonial home or its contents.

Registration of order  
R.S.O. 1970,  
cc. 409, 234

**42.** An order made under this Part is registrable against land under *The Registry Act* and *The Land Titles Act*.

Application of Part

**43.**—(1) This Part applies to matrimonial homes that are situated in Ontario.

Idem

(2) This Part applies notwithstanding that,

- (a) the spouses entered into the marriage before this Part comes into force; or
- (b) the matrimonial home was acquired before this Part comes into force,

but does not apply where an application for possession of a matrimonial home was commenced before this Part comes into force.

## PART IV

### MARRIAGE CONTRACTS

Interpretation

**44.** In this Part, “marriage contract” means an agreement referred to in subsection 1 of section 45.

Marriage contracts

**45.**—(1) Two persons may enter into an agreement, before or during their marriage, in which they agree on their respective rights and obligations under the marriage or upon

separation or the annulment or dissolution of the marriage or upon death, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children;
- (d) the right to custody of their children; and
- (e) any other matter in the settlement of their affairs.

(2) A marriage contract and any agreement to amend or rescind a marriage contract are not binding unless made in writing and signed by the persons to be bound and witnessed. Form of contract

(3) A minor who has capacity to contract marriage has capacity to enter into a marriage contract that is approved by the court, whether the approval is given before or after the contract is entered into. Capacity of minor

(4) The committee of a person who is mentally incompetent or, if the committee is the spouse of such person or if there is no committee, the Public Trustee may, subject to the approval of the court, enter into a marriage contract or give any waiver or consent under this Act on behalf of the mentally incompetent person. Agreement on behalf of mentally incompetent

**46.--**(1) Any provision in a marriage contract purporting to limit the rights of a spouse under Part III in respect of the matrimonial home is void. Rights re matrimonial home excepted

(2) Where the provision for support in a marriage contract, or the waiver of the right to support, results in circumstances in which the spouse qualifies for an allowance for support out of public money, the court may proceed under Part II notwithstanding the waiver or agreement. Insufficient provision for support

(3) In the determination of any matter respecting the support, education, moral training or custody of a child, the court may disregard any provision of a marriage contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child. Subject to best interests of child

(4) A provision in a marriage contract whereby any right of a spouse is dependent upon remaining chaste is void. Dum casta clauses

(5) In the determination of an application under this Act, the court may disregard any provision of a marriage contract where, in the opinion of the court, it is entered into by fraud or under duress or undue influence. Fraud, duress, etc.

Severability

(6) Any provision of a marriage contract that is void or disregarded under this section shall be deemed to be severable from the other provisions of the contract.

Rights of donors of gifts upon marriage

**47.** Where a marriage contract provides that specific gifts made to one or both spouses are not disposable without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of the enforcement or any amendment of the provision.

Contracts made outside Ontario

**48.** The manner and formalities of making a marriage contract and its intrinsic validity and effect are governed by the proper law of the contract, except that,

- (a) a marriage contract for which the proper law is that of a jurisdiction other than Ontario, is also valid and enforceable in Ontario if entered into in accordance with the internal law of Ontario; and
- (b) section 46 applies in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario.

## PART V

### AMENDMENTS TO THE COMMON LAW AND STATUTE LAW

Unit of legal personality abolished

**49.—**(1) For all purposes of the Law of Ontario, a married man has a legal personality that is independent, separate and distinct from that of his wife and a married woman has a legal personality that is independent, separate and distinct from that of her husband.

Capacity of married person

(2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if such person were an unmarried person. 1975, c. 41, s. 1 (1, 2).

Idem

(3) Without limiting the generality of subsections 1 and 2,

- (a) each of the parties to a marriage has the like right of action in tort against the other as if they were not married;
- (b) a married woman is capable of acting as guardian *ad litem* or next friend as if she were an unmarried woman; 1975, c. 41, s. 1 (3), *part.*
- (c) the same rules shall be applied to determine the domicile of a married woman as for a married man.

Purpose of subss. 1, 2

(4) The purpose of subsections 1 and 2 is to make the same law apply, and apply equally, to married men and

married women and to remove any difference therein resulting from any common law rule or doctrine, and subsections 1 and 2 shall be so construed. 1975, c. 41, s. 1 (4).

**50.** No person shall be disentitled from bringing an action or other proceeding against another for the reason only that they stand in the relationship of parent and child. 1975, c. 41, s. 3.

Actions  
between  
parent and  
child

**51.** No person shall be disentitled from recovering damages in respect of injuries incurred for the reason only that the injuries were incurred before his birth. 1975, c. 41, s. 4.

Recovery for  
prenatal  
injuries

**52.—**(1) Subject to subsection 2, a child who is a minor,

Domicile  
of minors

(a) takes the domicile of his or her parents, where both parents have a common domicile;

(b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;

(c) takes the domicile of the father, where the domicile of the child cannot be determined under clause a or b; or

(d) takes the domicile of the mother, where the domicile of the child cannot be determined under clause c.

(2) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age.

Idem

**53.—**(1) No action shall be brought for criminal conversation or for any damages resulting therefrom or from adultery.

Criminal  
conversation  
abolished

(2) No action shall be brought by a married person for the enticement or harbouring of the spouse of such person or for any damages resulting therefrom.

Enticement  
and  
harbouring  
of spouse  
abolished

(3) No action shall be brought by a married person for the loss of the consortium of his or her spouse or for any damages resulting therefrom.

Loss of  
consortium  
abolished

(4) No action shall be brought by a parent for the enticement, harbouring, seduction or loss of services of his child or for any damages resulting therefrom.

Enticement,  
harbouring,  
seduction,  
loss of  
services  
of child  
abolished

R.S.O. 1970,  
c. 428;  
1971, c. 98,  
Sched.,  
par. 30,  
repealed

(5) *The Seduction Act*, being chapter 428 of the Revised Statutes of Ontario, 1970 and paragraph 30 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,  
c. 228, s. 59,  
amended

(6) Section 59 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by striking out "criminal conversation, seduction" in the first line.

Dower  
abolished

**54.**—(1) The common law right of a widow to dower is hereby abolished.

R.S.O. 1970,  
c. 135;  
1971, c. 98,  
Sched.,  
par. 11,  
repealed

(2) *The Dower Act*, being chapter 135 of the Revised Statutes of Ontario, 1970, and paragraph 11 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,  
c. 152, s. 28 (2),  
repealed

(3) Subsection 2 of section 28 of *The Execution Act*, being chapter 152 of the Revised Statutes of Ontario, 1970, is repealed.

Vested  
right to  
dower

(4) Subsections 1, 2 and 3 do not apply in respect of a right to dower that has vested before subsections 1 and 2 come into force.

Refund of  
indemnity  
held by  
accountant  
for dower

(5) Where money has been paid into court as an indemnity in respect of a right to dower that has not vested before this section comes into force, the husband of the person in respect of whose dower right the money was paid into court is entitled to be paid the money upon application to the accountant of the court, without order.

Alimony  
abolished

**55.** The right of a married woman to alimony under any law existing before this section comes into force is hereby abolished.

R.S.O. 1970,  
c. 67;  
1971, c. 98,  
s. 18 (2),  
repealed

**56.** *The Children's Maintenance Act*, being chapter 67 of the Revised Statutes of Ontario, 1970 and subsection 2 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,  
c. 128,  
1971, c. 98,  
s. 18 (1);  
1973, c. 133,  
repealed

**57.** *The Deserted Wives' and Children's Maintenance Act*, being chapter 128 of the Revised Statutes of Ontario, 1970, subsection 1 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, and *The Deserted Wives' and Children's Maintenance Amendment Act, 1973*, being chapter 133, are repealed.

**58.** Section 9 of *The Employment Standards Act, 1974*, 1974, c. 122, being chapter 112, is repealed and the following substituted re-enacted therefor:

9. No employer shall dismiss or suspend an employee on the ground that garnishment proceedings are or may be taken against the employee or that an attachment order under section 24 of *The Family Law Reform Act, 1976* has been or may be made against the employee. Garnishment or attachment of wages  
1976, c. ...

**59.** Sections 1, 2, 3 and 4 of *The Family Law Reform Act, 1975*, being chapter 41, are repealed. 1975, c. 41,  
ss. 1-4,  
repealed

**60.** *The Fatal Accidents Act*, being chapter 164 of the Revised Statutes of Ontario, 1970, *The Fatal Accidents Amendment Act, 1973*, being chapter 16, and *The Fatal Accidents Amendment Act, 1975*, being chapter 38, are repealed. R.S.O. 1970,  
c. 164;  
1973, c. 16;  
1975, c. 38,  
repealed

**61.**—(1) Subsection 4, subsection 4a as enacted by the Statutes of Ontario, 1971, chapter 98, section 18, and subsection 5 of section 1, subsection 2 of section 2 and sections 10 and 13 of *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, and subsection 3 of section 18 and subparagraph 1 of paragraph 14 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed. R.S.O. 1970,  
c. 222,  
amended;  
1971, c. 98,  
s. 18 (3),  
Sched.,  
par. 14,  
subpar. 1,  
repealed

(2) Section 13 of *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970,  
c. 222, s. 13,  
repealed

**62.**—(1) Subject to subsection 2, section 81 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970,  
c. 228, s. 81,  
repealed

(2) The provision repealed by subsection 1 remains in force in respect of a judgment for alimony in an action commenced before this section comes into force. Continuance for existing judgments

**63.** Sections 1 and 12 of *The Married Women's Property Act*, being chapter 262 of the Revised Statutes of Ontario, 1970, are repealed. R.S.O. 1970,  
c. 262, s. 1, 12,  
repealed

**64.** Sections 1, 2, 3, 4, 5 and 8 of *The Matrimonial Causes Act*, being chapter 265 of the Revised Statutes of Ontario, 1970 and subsection 4 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed. R.S.O. 1970,  
c. 265, ss. 1-5,  
8;  
1971, c. 98,  
s. 18 (4),  
repealed

R.S.O. 1970,  
c. 336,  
repealed

**65.** *The Parents' Maintenance Act*, being chapter 336 of the Revised Statutes of Ontario, 1970, is repealed.

R.S.O. 1970,  
c. 342,  
s. 24,  
amended

**66.** Section 24 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970 is amended by adding thereto the following subsection:

Application  
of subs. 1

(2) Subsection 1 does not apply to the execution, seizure or attachment of moneys payable under a pension plan in satisfaction of an order for support under *The Family Law Reform Act, 1976*.

1976, c. ...

R.S.O. 1970,  
c. 369, s. 25,  
repealed

**67.**—(1) Subject to subsection 2, section 25 of *The Provincial Courts Act*, being chapter 369 of the Revised Statutes of Ontario, 1970, is repealed.

Continu-  
ance for  
existing  
judgments

(2) The provision repealed by subsection 1 remains in force in respect of a judgment or order for alimony or maintenance made in an action commenced before this section comes into force.

R.S.O. 1970,  
c. 444, s. 4,  
amended

**68.** Section 4 of *The Statute of Frauds*, being chapter 444 of the Revised Statutes of Ontario, 1970, is amended by striking out "any agreement made upon consideration of marriage, or upon" in the fifth and sixth lines.

Application  
of ss. 53, 55, 56,  
57, 60 (1), 61, 63,  
64, 65

**69.** Sections 53, 55, 56 and 57, subsection 1 of section 60 and sections 61, 63, 64 and 65 apply in all cases when they come into force except in cases where an action or proceeding was commenced under the abolished, repealed or amended provision before that date.

Commence-  
ment

**70.** This Act comes into force on the 1st day of July, 1977.

Short title

**71.** This Act may be cited as *The Family Law Reform Act, 1976*.



